IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 19281 of 2004

Between:

Sri A. Sai Kumar, S/o.A.Ranganatham, H.No.1/125, Near Railway Station, Kadapa Dist., A.P.

..... PETITIONER

AND

1 The Govt. of Andhra Pradesh rep.by its Principal Secretary, Industries & Commerce Department, Secretariat, Hyderabad.
2 M/s. Ashok Minerals, rep. by its Director, Sri A. Ashok Kumar, R/o.1/1940, Krishnappa Nagar, Near Railway Station, Kadapa Dist., A.P.
3 The Govt. of India, Ministry of Mines, rep. by Under Secretary, R/o.315-D Wing, Shastry Bhavan, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue any writ, order or direction more particularly one in the nature of writ of Mandamus declaring the Government Memo.No.13003/M.III.2/2003-2 dated 29-11-2003 and the consequential G.O.Ms.No.72, Industries & Commerce (M.III) Department, dated 22-03-2004 of the 1st respondent and the final order No.38/2004 dated 5-10-2004 in Revision Application file No.2 (3)/2004-Rc- it is submitted that of the 3rd respondent as illegal, arbitrary, capricious, unwarranted, violative of established principles of Law and unconstitutional and set aside the same holding that the petitioner is entitled for the grant of mining lease for Barytes over an extent of Ac.1.45 in sy.No.288/24 of B.Kothapalli village, Vemula Mandal, Kadapa District and pass.

Counsel for the Petitioner: MR.P.VEERA REDDY

Counsel for the Respondent Nos.1 & 3: GP FOR MINES AND GEOLOGY

Counsel for the Respondent No.2: Smt. N.Shobha

The Court made the following:

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ORDER:

In pursuance of the notification issued by the 1st respondent (Government of Andhra Pradesh) in G.O.Ms.No.429 Industries & Commerce (M.III) Department dated 28-12-1992 notifying that land in S.No.288/45 of V.Kothapalli village is available for mining lease, petitioner submitted his application on 26-03-1993 to an extent of Ac.1-45 cents in S.No.288/24 complying with all the formalities. Second respondent and another person also submitted their applications for mining lease on the very same day. It is the case of the petitioner that second respondent applied for mining lease in an entire extent of Ac.3-45 cents in S.No.288/24 and also the land in S.No.288/45 in the same application though they are non-contiguous, and that the 3rd applicant applied for the lease of land in S.No.288/45. Later, second respondent seems to have confined his application to the land in S.No.288/24 only. Since applications of petitioner and second respondent were submitted on the same day, as per Section 11(3) of the Mines & Minerals (Development and Regulation) Act, 1957 (the Act), the Assistant Director through his report dated 28-01-1994 recommended the case of the petitioner for consideration of the mining lease. Deputy Director of Mines and Geology and the Director also recommending the case of the petitioner, sent a report. Thereupon, first respondent issued show cause notice in Memo No.12733/III-2/98-1 dated 01-02-1999 to the second respondent as to why his application should not be rejected. Since second respondent did not submit his objections, first respondent sent a second show cause notice to the second respondent through the Memo dated 26-04-1999 and passed orders on 01-12-2000 granting mining lease to the petitioner, rejecting the application of the second respondent. Second respondent preferred a revision to the third respondent, who allowed it. On 05-04-2002, again the case was remitted to the first respondent with a direction to give one more opportunity of hearing to the second respondent. After affording an opportunity of being heard to the petitioner and second respondent, first respondent by the order dated 29-11-2003, while rejecting the application of the petitioner, awarded the mining lease to the second respondent. Questioning the same, petitioner preferred a revision to the third respondent, which confirmed the order of the first respondent by the order impugned in this petition. Hence, this petition.

2. The main contention of the learned counsel for the petitioner is that 1st respondent erred in not rejecting the composite application of the second respondent because according to him an application for mining lease in respect of two areas in two survey numbers which are non-contiguous, is not a valid application and so considering such an application on the ground that he withdrew the application in respect of the other survey number and confined it to S.No.288/24 is not in accordance with the Mines and Minerals (Development and Regulation) Act, 1957 (the Act) and the A.P. Minor Mineral Concession Rules, 1966 (the Rules). It is his contention that since the order dated 29.11.2003 granting mining lease to the second respondent, while rejecting the application of the petitioner, does not contain any reasons and since the revision preferred by the petitioner also was dismissed by the third respondent, without assigning any reasons, the orders of the first and third respondents, are liable to be set aside. He placed strong reliance on **BHAGAT RAJA v UNION OF INDIA**, **TRAVANCORE RAYONS v UNION OF INDIA** and **R.B.SETH SHREERAM DURGAPRASAD v SECRETARY, GOVT. OF INDIA** in support of the said contention.

3. The contention of the learned counsel for the second respondent is that petitioner and the owner of the second respondent concern are brothers, and though second respondent sought lease in respect of land in two survey numbers, after coming to know that those survey numbers are non-contiguous, application in respect of the other land was withdrawn by the 2nd respondent and it confined its application to the land in S.No.288/24, and since both the applications of petitioner and the second respondent were filed on the same day, first respondent after considering the merits and demerits, as contemplated by Section 11 of the Act, and keeping in view the fact that petitioner was granted mining lease in respect of other land, awarded the mining lease in respect of the land in S.No.288/24 to the second respondent, and since the orders of first respondent and third respondent clearly shows that contentions raised on both sides were considered, they cannot be treated as non-speaking orders. Relying on **DHARAMBIR SINGH v UNION OF INDIA** and **INDIAN METALS & FERRO ALLOYS LTD. v UNION OF INDIA** she contended that there are no grounds to interfere with the impugned order.

4. Section 11 of the Act lays down the rules to be followed for disposal of the applications received on the same day. The operative portion of the order dated 29-11-2003 passed by second respondent, rejecting the application of the petitioner, and allowing the application of the second respondent, reads-

> "After hearing both the parties, Government have decided to grant of Mining lease for Barytes over an extent of 1.45 acres in S.No.288/24 in favour of M/s.Ashok Minerals in the area referred to at para-2 above for a period of 20 years subject to submission of approved mining plan within 6 months from the date of receipt of this memo and to reject the Mining Lease application of Sri A.Sai Kumar for the same area."

Against that order, petitioner preferred a revision to 3rd respondent. The Revision Authority, after making a note of the contentions raised by both sides, held as follows:

> "Heard the arguments of all the parties and also gone through the records. It is evident from the impugned order that the petitioner has been given opportunity of hearing under Rule 26(1) of MCR, 1960 before deciding the application of the petitioner. The State Govt. has statedly taken the decision in accordance with the provision of Sec.11(3) of the Act. We, therefore, upheld the order of the State Government and Revision Application is therefore rejected."

Neither the order of the 1st respondent nor the order of the 3rd respondent, impugned in this petition, contains the reasons for rejecting the application of the petitioner and allowing the application of second respondent.

5. In **BHAGAT RAJA** case (1 supra) a Constitution Bench of the apex Court, while extracting the observations in **M.P.INDUSTRIES LTD. v UNION OF INDIA,** stated as follows in para-13 of its judgment.

> "The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory Court to keep the tribunals within bounds. A reasoned order is a desirable condition of judicial disposal.
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> .. .. If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But if reasons for an order are given, it will be all effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard."

It was further observed in that case that the position of ordinary Courts of law

was different from that of tribunals exercising judicial functions and it was said:

"A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties, and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision, in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate Court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give it own reasons succinctly; but in case of affirmance where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shah be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the lasts of each case."

In para-16 at page 1614 it held -

"As a matter of fact, R. 26 considerably lightens the burden of the Central Government in this respect. As the State Government has to give reasons, the Central Government after considering the comments and counter-comments on the reasons given by the State Government should have no difficulty in making up its mind as to whether the reasoning of the State Government is acceptable and to state as briefly as possible the reasons for its own conclusion."

and in para-20 at page 1615 it is held -

"The explanation of the assessee is either accepted or rejected; but in the case which we have before us, the State Government has to consider the merits and demerits of the applications and to give its reasons why it prefers one to the other or others. There is a dispute between two or more contesting parties and the reasons for preferring one to the other or others may be more than one. It is not a question of accepting or rejecting an explanation. In our opinion, what was said in the above Income-tax case will not apply in the case of a review by the Central Government of a decision of the State Government under the Act and the Rules."

6. In **TRAVANCORE RAYONS** case (2 supra) the apex Court, while considering a case arising under Central Excise and Salt Act, observed as follows in para-7 of its judgment.

"The Central Government is by Section 36 invested with the judicial power of the State. Orders involving important disputes are brought before the Government. The orders made by the Central Government are subject to appeal to this Court under Article 136 of the Constitution. It would be impossible for this Court, exercising jurisdiction under Article l36, to decide the dispute without a speaking order of the authority, setting out the nature of the dispute, the arguments in support thereof raised

by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute. Exercise of the right to appeal to this Court would be futile, if the authority chooses not to disclose the reasons in support of the decision reached by it. A party who approaches the Government in exercise of a statutory right, for adjudication of a dispute is entitled to know at least the official designation of the person who has considered the matter, what was considered by him, and the reasons for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of materials justifying an inference that there has been a judicial consideration of the dispute by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. If the Officer acting on behalf of the Government chooses to give no reasons, the right of appeal will be devoid of any substance."

and in para-11 it held -

"In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or expediency. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power."

7. In **R.B.SETH SHREERAM DURGAPRASAD** case (3 supra) the apex Court held as follows in para-7.

"Further, under S. 11(2) it is provided that where two or more persons have applied for a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the lease over an applicant whose application was received later. If it is accepted that the application should be treated as a valid application even though it is not accompanied by the documents referred to in R.22 provided such documents are produced before the order is made, it would mean that an applicant whose application is defective in the first instance would, by producing the documents later, be entitled to preference over another applicant who had made the application in strict conformity with the rules. Such a result has to be avoided as that would not only enable applicants to submit any scrap of paper and demand that it should be treated as an application on the ground that all the requirements of the rules were subsequently complied with before the order of grant or refusal is made."

8. In **DHARAMBIR SINGH** case (4 supra) relied on by the learned counsel for 2nd respondent, the apex Court held as follows in para-4.

> "While granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law."

and in **INDIAN METALS & FERRO ALLOYS LTD.** case (5 supra) relied on by the learned counsel for 2nd respondent, the apex Court held -

> "……the State Government is not bound to dispose of applications only on a 'first come, first served' basis. It will be easily appreciated that this should indeed be so for the interests of national mineral development clearly require in the case of major minerals, that the mining lease should be given to that applicant who can exploit it most efficiently."

These two decisions only speak about the discretion of the Government. The question is whether the discretion is properly exercised as per the procedure prescribed or not.

9. Neither the order of the first respondent nor the order of the third respondent contain the reasons for their rejecting the application of the petitioner and considering the application of the second respondent. Mere extracting the case and arguments advanced by both sides, and stating that the application of the second respondent is considered and the application of the petitioner is rejected, does not amount to giving reasons. So, it is difficult for this Court to know on what basis the application of the second respondent was considered and the application of the petitioner was rejected, and so, the impugned order is liable to be and hence is set aside.

10. The writ petition is allowed. Rule Nisi is made absolute. Order of the 3rd respondent impugned in the petition is set aside and the matter is remitted to the third respondent for deciding the case afresh, after affording an opportunity of being heard to both the parties and for passing an order with reasons supporting the decision arrived by it, as expeditiously as possible, at any rate within a period of two months from the date of receipt of a copy of this order. No costs.

(C.Y.Somayajulu, J.)

Date: 19--4--2005

Cvrk

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Bilal Nazki, the Acting Chief Justice on this Tudesday the Nineteenth day of April, Two thousand and Five.

ASSISTANT REGISTRAR

To

1. The Principal Secretary, Industries & Commerce Department,

Govt. of Andhra Pradesh, Secretariat, Hyderabad.

2. The Udner Secretary, Govt. of India, Minsitry of Mines,

R/o.315-D Wing, Shastry Bhavan, New Delhi.

3. 2 copies to the Government Pleader for Mines and Geology, High

Court Buildings, Hyderabad. (OUT)

4. 2 CD copies

5. 1 CC to MR.VEERA REDDY, Advocate.